

Honorable Richard A. Jones

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

COLUMBIA CASUALTY COMPANY, an
Illinois corporation,

Plaintiff,

v.

SEATTLE CHILDREN'S HEALTHCARE
SYSTEM, a Washington corporation,

v.

LEXINGTON INSURANCE COMPANY, a
foreign corporation; EVANSTON
INSURANCE COMPANY, a foreign
corporation; NATIONAL FIRE & MARINE
INSURANCE COMPANY, a foreign
corporation; IRONSHORE SPECIALTY
INSURANCE COMPANY, a foreign
corporation; STEADFAST INSURANCE
COMPANY, a foreign corporation;
HOMELAND INSURANCE COMPANY, a
foreign corporation; ILLINOIS UNION
INSURANCE COMPANY, a foreign
corporation;

Cross-Defendants.

NO. 2:20-cv-00046-RAJ

CROSS-DEFENDANT ILLINOIS UNION
INSURANCE COMPANY'S ANSWER
AND AFFIRMATIVE DEFENSES

Cross-Defendant Illinois Union Insurance Company ("Illinois Union"), by and through
its counsel of record, Gordon Rees Scully Mansukhani, LLP, Donald J. Verfurth and Sally S.

CROSS-DEFENDANT ILLINOIS UNION
INSURANCE COMPANY'S ANSWER AND
AFFIRMATIVE DEFENSES - 1
No. 2:20-cv-00046-RAJ

**GORDON REES SCULLY
MANSUKHANI, LLP**
701 Fifth Avenue, Suite 2100
Seattle, WA 98104
Telephone: (206) 695-5100
Facsimile: (206) 689-2822

1 Kim, answers Defendant Seattle Children's Healthcare System's ("SCH") Cross-Claims and
2 asserts Affirmative Defenses as follows:

3 **A. Introduction**

4 1. In answer to paragraph 1, this paragraph does not contain any allegations relating
5 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
6 information sufficient to form a belief as to the truth of the allegations in this paragraph and
7 therefore denies the same.

8 2. In answer to paragraph 2, no response from Illinois Union is necessary to the
9 extent this paragraph contains allegations that pertain to parties other than Illinois Union. With
10 respect to the allegations that pertain to Illinois Union, Illinois Union admits that it issued the
11 Healthcare Facilities Excess Liability Policy, Policy No. XHL G24560831 001, effective July
12 1, 2009 to July 1, 2010 ("Excess Liability Policy"), to Seattle Children's Healthcare System.
13 The Excess Liability Policy speaks for itself and provides coverage pursuant to its terms and
14 conditions, and not otherwise. Except as specifically admitted, Illinois Union is without
15 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
16 in this paragraph and therefore denies the same.

17 **B. Parties**

18 3. In answer to paragraph 3, this paragraph does not contain any allegations relating
19 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
20 information sufficient to form a belief as to the truth of the allegations in this paragraph and
21 therefore denies the same.

22 4. In answer to paragraph 4, this paragraph does not contain any allegations relating
23 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
24 information sufficient to form a belief as to the truth of the allegations in this paragraph and
25 therefore denies the same.

1 5. In answer to paragraph 5, this paragraph does not contain any allegations relating
2 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
3 information sufficient to form a belief as to the truth of the allegations in this paragraph and
4 therefore denies the same.

5 6. In answer to paragraph 6, this paragraph does not contain any allegations relating
6 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
7 information sufficient to form a belief as to the truth of the allegations in this paragraph and
8 therefore denies the same.

9 7. In answer to paragraph 7, this paragraph does not contain any allegations relating
10 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
11 information sufficient to form a belief as to the truth of the allegations in this paragraph and
12 therefore denies the same.

13 8. In answer to paragraph 8, this paragraph does not contain any allegations relating
14 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
15 information sufficient to form a belief as to the truth of the allegations in this paragraph and
16 therefore denies the same.

17 9. In answer to paragraph 9, this paragraph does not contain any allegations relating
18 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
19 information sufficient to form a belief as to the truth of the allegations in this paragraph and
20 therefore denies the same.

21 10. In answer to paragraph 10, this paragraph does not contain any allegations relating
22 to Illinois Union. To the extent a response is required, Illinois Union is without knowledge or
23 information sufficient to form a belief as to the truth of the allegations in this paragraph and
24 therefore denies the same.

25 11. In answer to paragraph 11, Illinois Union admits that it is an insurance company
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1 that is incorporated and domiciled in the State of Illinois, with its principal place of business in
2 Pennsylvania.

3 **C. Jurisdiction and Venue**

4 12. In answer to paragraph 12, Illinois Union asserts that this paragraph contains
5 statements or conclusions of law, to which no response is required. To the extent a response is
6 required, Illinois Union is without knowledge or information sufficient to form a belief as to the
7 truth of the allegations in this paragraph and therefore denies the same.

8 13. In answer to paragraph 13, Illinois Union asserts that this paragraph contains
9 statements or conclusions of law, to which no response is required. To the extent a response is
10 required, Illinois Union is without knowledge or information sufficient to form a belief as to the
11 truth of the allegations in this paragraph and therefore denies the same.

12 14. In answer to paragraph 14, Illinois Union asserts that this paragraph contains
13 statements or conclusions of law, to which no response is required. To the extent a response is
14 required, Illinois Union admits that it conducts insurance business in Washington. Except as
15 specifically admitted, Illinois Union is without knowledge or information sufficient to form a
16 belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

17 15. In answer to paragraph 15, Illinois Union asserts that this paragraph contains
18 statements or conclusions of law, to which no response is required. To the extent a response is
19 required, Illinois Union is without knowledge or information sufficient to form a belief as to the
20 truth of the allegations in this paragraph and therefore denies the same.

21 16. In answer to paragraph 16, Illinois Union asserts that this paragraph contains
22 statements or conclusions of law, to which no response is required. To the extent a response is
23 required, Illinois asserts that no response from Illinois Union is necessary with respect to
24 allegations that pertain to parties other than Illinois Union. With respect to the allegations
25 related to Illinois Union, Illinois Union is without knowledge or information sufficient to form
26

1 a belief as to the truth of the allegations in this paragraph and therefore denies the same.

2 17. In answer to paragraph 17, Illinois Union asserts that this paragraph contains
3 statements or conclusions of law, to which no response is required. To the extent a response is
4 required, Illinois asserts that no response from Illinois Union is necessary with respect to
5 allegations that pertain to parties other than Illinois Union. With respect to the allegations
6 related to Illinois Union, Illinois Union is without knowledge or information sufficient to form
7 a belief as to the truth of the allegations in this paragraph and therefore denies the same.

8 18. In answer to paragraph 18, Illinois Union asserts that this paragraph contains
9 statements or conclusions of law, to which no response is required. To the extent a response is
10 required, Illinois asserts that no response from Illinois Union is necessary with respect to
11 allegations that pertain to parties other than Illinois Union. With respect to the allegations
12 related to Illinois Union, Illinois Union is without knowledge or information sufficient to form
13 a belief as to the truth of the allegations in this paragraph and therefore denies the same.

14 **D. Factual Background**

15 19. In answer to paragraph 19, this paragraph does not contain any allegations relating
16 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
17 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
18 the truth of the allegations in this paragraph and therefore denies the same.

19 20. In answer to paragraph 20, Illinois Union admits that it issued the Excess Liability
20 Policy, which speaks for itself and provides coverage pursuant to its terms and conditions, and
21 not otherwise. Except as specifically admitted, Illinois Union denies the remaining allegations
22 in this paragraph.

23 21. In answer to paragraph 21, this paragraph does not contain any allegations relating
24 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
25 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
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1 the truth of the allegations in this paragraph and therefore denies the same.

2 22. In answer to paragraph 22, this paragraph does not contain any allegations relating
3 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
4 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
5 the truth of the allegations in this paragraph and therefore denies the same.

6 23. In answer to paragraph 23, no response from Illinois Union is necessary to the
7 extent this paragraph contains allegations that pertain to parties other than Illinois Union. With
8 respect to the allegations related to Illinois Union, Illinois Union is without knowledge or
9 information sufficient to form a belief as to the truth of the allegations in this paragraph and
10 therefore denies the same.

11 24. In answer to paragraph 24, this paragraph does not contain any allegations relating
12 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
13 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations in this paragraph and therefore denies the same.

15 25. In answer to paragraph 25, this paragraph does not contain any allegations relating
16 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
17 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
18 the truth of the allegations in this paragraph and therefore denies the same.

19 26. In answer to paragraph 26, this paragraph does not contain any allegations relating
20 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
21 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
22 the truth of the allegations in this paragraph and therefore denies the same.

23 27. In answer to paragraph 27, this paragraph does not contain any allegations relating
24 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
25 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
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1 the truth of the allegations in this paragraph and therefore denies the same.

2 28. In answer to paragraph 28, this paragraph does not contain any allegations relating
3 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
4 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
5 the truth of the allegations in this paragraph and therefore denies the same.

6 29. In answer to paragraph 29, this paragraph does not contain any allegations relating
7 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
8 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
9 the truth of the allegations in this paragraph and therefore denies the same.

10 30. In answer to paragraph 30, this paragraph does not contain any allegations
11 relating to Illinois Union. No response from Illinois Union is necessary. To the extent a
12 response is necessary, Illinois Union is without knowledge or information sufficient to form a
13 belief as to the truth of the allegations in this paragraph and therefore denies the same.

14 31. In answer to paragraph 31, this paragraph does not contain any allegations relating
15 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
16 necessary, Illinois Union asserts that the pleadings referenced therein speak for themselves.

17 32. In answer to paragraph 32, Illinois Union asserts that this paragraph contains
18 statements or conclusions of law, to which no response is required. To the extent a response is
19 required, Illinois Union asserts that no response from Illinois Union is necessary to the extent
20 this paragraph contains allegations that pertain to parties other than Illinois Union. With respect
21 to the allegations related to Illinois Union, the Excess Liability Policy speaks for itself and
22 provides coverage pursuant to its terms and conditions, and not otherwise.

23 33. In answer to paragraph 33, this paragraph does not contain any allegations relating
24 to Illinois Union. No response from Illinois Union is necessary. To the extent a response is
25 necessary, Illinois Union is without knowledge or information sufficient to form a belief as to
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the truth of the allegations in this paragraph and therefore denies the same.

E. Claim for Declaratory Judgment

34. In answer to paragraph 34, Illinois Union realleges and incorporates by reference its answers to paragraphs 1 through 33 as though fully set forth herein.

35. In answer to paragraph 35, Illinois Union asserts that this paragraph contains statements or conclusions of law, to which no response is required. To the extent a response is required, Illinois Union asserts that no response is necessary to the extent this paragraph contains allegations that pertain to parties other than Illinois Union. With respect to the allegations related to Illinois Union, the Excess Liability Policy speaks for itself and provides coverage pursuant to its terms and conditions, and not otherwise. Illinois Union is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

36. In answer to paragraph 36, Illinois Union asserts that this paragraph contains statements or conclusions of law, to which no response is required. To the extent a response is required, Illinois Union asserts that no response is necessary to the extent this paragraph contains allegations that pertain to parties other than Illinois Union. With respect to the allegations related to Illinois Union, the Excess Liability Policy speaks for itself and provides coverage pursuant to its terms and conditions, and not otherwise. Illinois Union is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

37. In answer to paragraph 37, Illinois Union asserts that this paragraph contains statements or conclusions of law, to which no response is required. To the extent a response is required, Illinois Union asserts that no response is necessary to the extent this paragraph contains allegations that pertain to parties other than Illinois Union. With respect to the allegations related to Illinois Union, the Excess Liability Policy speaks for itself and provides coverage

1 pursuant to its terms and conditions, and not otherwise. Illinois Union is without knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegations in this
3 paragraph and therefore denies the same.

4 38. In answer to paragraph 38, Illinois Union asserts that this paragraph contains
5 statements or conclusions of law, to which no response is required. To the extent a response is
6 required, Illinois Union asserts that no response is necessary to the extent this paragraph contains
7 allegations that pertain to parties other than Illinois Union. With respect to the allegations
8 related to Illinois Union, the Excess Liability Policy speaks for itself and provides coverage
9 pursuant to its terms and conditions, and not otherwise. Illinois Union is without knowledge or
10 information sufficient to form a belief as to the truth of the remaining allegations in this
11 paragraph and therefore denies the same.

12 39. In answer to paragraph 39, Illinois Union asserts that this paragraph contains
13 statements or conclusions of law, to which no response is required. To the extent a response is
14 required, Illinois Union asserts that no response is necessary to the extent this paragraph contains
15 allegations that pertain to parties other than Illinois Union. With respect to the allegations
16 related to Illinois Union, the Excess Liability Policy speaks for itself and provides coverage
17 pursuant to its terms and conditions, and not otherwise. Illinois Union is without knowledge or
18 information sufficient to form a belief as to the truth of the remaining allegations in this
19 paragraph and therefore denies the same.

20 **F. Need for a Stay of this Litigation**

21 40. In answer to paragraph 40, Illinois Union asserts that this paragraph contains
22 statements or conclusions of law, to which no response is required. To the extent a response is
23 required, Illinois Union is without knowledge or information sufficient to form a belief as to the
24 truth of the remaining allegations in this paragraph and therefore denies the same.

25 41. In answer to paragraph 41, Illinois Union asserts that this paragraph contains
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statements or conclusions of law, to which no response is required. To the extent a response is required, Illinois Union is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

42. In answer to paragraph 42, Illinois Union asserts that this paragraph contains statements or conclusions of law, to which no response is required. To the extent a response is required, Illinois Union is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

43. In answer to paragraph 43, Illinois Union asserts that this paragraph contains statements or conclusions of law, to which no response is required. To the extent a response is required, Illinois Union is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph and therefore denies the same.

PRAYER FOR RELIEF

In answer to SCH's Prayer for Relief, A through F, Illinois Union denies that SCH is entitled to any relief requested therein.

AFFIRMATIVE DEFENSES

By way of further answer and without admitting any of the allegations set forth in the Cross-Complaint, Cross-Defendant Illinois Union Insurance Company states and alleges the following Affirmative Defenses:

1. SCH's claims fail to state a claim for which relief can be granted.
2. SCH's claims are barred, in whole or in part, to the extent the Excess Liability Policy's terms, conditions, exclusions and endorsements preclude coverage, in whole or in part for the claims asserted herein.
3. SCH's claims are barred, in whole or in part, to the extent SCH's claims do not qualify as **loss events**, as defined by the Excess Liability Policy.¹

¹ Bolded terms are defined terms in the Excess Liability Policy.

1 4. SCH's claims are barred, in whole or in part, to the extent **loss events** did not take
2 place prior to the expiration or termination date of the Excess Liability Policy.

3 5. SCH's claims are barred, in whole or in part, to the extent the **loss events** are not
4 for a **claim** that was first made against, or first recognized by, SCH during the **policy period**.

5 6. SCH's claims are barred, in whole or in part, to the extent the **loss events** are not
6 covered by the **underlying insurance**.

7 7. SCH's claims are barred, in whole or in part, to the extent Exclusion G – Dishonest
8 Acts, applies to preclude coverage.

9 8. SCH's claims are barred, in whole or in part, to the extent Exclusion K – Mold,
10 applies to preclude coverage.

11 9. SCH's claims are barred, in whole or in part, to the extent Exclusion N – Prior and
12 Subsequent Acts – Claims Made Coverages, applies to preclude coverage.

13 10. SCH's claims are barred, in whole or in part, to the extent Exclusion O – Prior
14 Knowledge or Prior Notice – Claims Made Coverage, applies to preclude coverage.

15 11. SCH's claims are limited by the Excess Liability Policy's Section E. Limit of
16 Liability, including, but not limited to, Subsection I, subparagraph A, Limit of Liability – Each
17 Loss Event; Subsection V, subparagraph A, Limit of Liability – Aggregate; Subsection V,
18 subparagraph B, Application of Underlying Limit(s) of Liability; Subsection V, subparagraph
19 C, Limit of Liability Inclusive of Expenses, Costs and Interest Except with Respect to Appeals;
20 and Subsection V, subparagraph D, Non-Stacking of Limits of Liability Over Multiple Policy
21 Periods.

22 12. SCH's claims are limited by the Excess Liability Policy's Section F. Conditions,
23 including, but not limited to, Subsection I, subparagraph D, Notice Of Loss Events and Other
24 Conditions; Subsection I, subparagraph E, Assistance And Cooperation; Subsection I,
25 subparagraph F, Action Against Us; Subsection I, subparagraph I, Assignment; Subsection I,
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subparagraph L, Our Rights; Subsection II, subparagraph B, Other Insurance; Subsection II, Subparagraph C, Exhaustion Of Underlying Limit(s) Of Liability; Subsection II, Subparagraph D, Maintenance Of Underlying Insurance; and Subsection II, Subparagraph E, Expenses, Costs and Interest.

13. SCH's claims are limited to the extent Illinois Union shall not assume the obligations of the **insured** or any insurer, irrespective of the inability of the **named insured** or any insurer to pay the **underlying limit(s) of liability** for any reason whatsoever, including, but not limited to, the inability of the **named insured** or any insurer to pay by reason of bankruptcy, insolvency, financial impairment or any regulatory or judicial intervention due to the financial condition of the **named insured** or any insurer.

14. SCH's claim are limited to the extent Illinois Union's obligation under the Excess Liability Policy is for **loss** in excess of the **underlying limit(s) of liability**, which must have been exhausted in accordance with the provisions of Section F, Subsection II, subparagraph C, Exhaustion of **Underlying Limit(s) of Liability**, and the **named insured** must have paid the full amount of any retention applicable to any **underlying insurance**.

15. SCH's claims are barred, in whole or in part, to the extent that SCH and/or its agent(s) failed to mitigate SCH's damages.

16. SCH's claims are barred, in whole or in part, to the extent that SCH's damages were proximately caused by the acts and omissions of third parties.

17. SCH's claims are barred, in whole or in part, to the extent any alleged injury suffered by SCH did not result from and/or was not proximately caused by Illinois Union's acts, omissions, or wrongful conduct.

18. SCH's claims are barred to the extent that SCH impaired and/or prejudiced Illinois Union's subrogation, contribution or indemnity rights.

19. SCH's claims are barred, in whole or in part, to the extent it failed to satisfy

1 conditions precedent under the Excess Liability Policy and/or insurance contract underlying the
2 Excess Liability Policy.

3 20. SCH's claims are barred, in whole or in part, to the extent it and/or its agent(s)
4 failed to provide notice of the claim consistent with the terms and conditions of the Excess
5 Liability Policy and/or insurance contract underlying the Excess Liability Policy.

6 21. SCH's claims are barred, in whole or in part, to the extent any recovery would be
7 contrary to public policy.

8 22. SCH's claims are barred, in whole or in part, to the extent SCH seeks damages
9 which are not properly recoverable under the theories set forth in the Cross-Claims, including,
10 but not limited to, attorney's fees.

11 23. SCH's claims are barred, in whole or in part, to the extent the purported damages
12 alleged by SCH were the result of SCH's actions and/or inactions. Any recovery against Illinois
13 Union must be reduced by that amount of comparative fault as ascribed to SCH.

14 24. SCH's claims are barred, in whole or in part, to the extent this Court lacks subject
15 matter jurisdiction over this matter.

16 25. SCH's claims are barred, in whole or in part, to the extent the doctrines of
17 equitable and judicial estoppel apply.

18 26. SCH's claims are barred, in whole or in part, to the extent the doctrines of waiver,
19 forfeiture, laches, accord and satisfaction, unjust enrichment, and unclean hands apply.

20 27. SCH's claims are barred, in whole or in part, to the extent the doctrines of res
21 judicata and collateral estoppel apply.

22 28. SCH's claims are barred, in whole or in part, to the extent the doctrines of payment
23 and/or release apply.

24 29. SCH's claims are barred, in whole or in part, to the extent the doctrines of
25 compromise and/or settlement apply.
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30. SCH's claims are barred, in whole or in part, to the extent the applicable statutes of limitation apply.

31. SCH's claims are barred, in whole or in part, to the extent the doctrines of express and/or implied release of claims apply.

32. SCH's claims are barred, in whole or in part, to the extent SCH is seeking coverage for any claim seeking non-pecuniary relief.

33. Illinois Union reserves the right to allege additional Affirmative Defenses as circumstances dictate.

PRAYER FOR RELIEF

WHEREFORE, having fully answered the allegations contained in the Cross-Claim, and having asserted affirmative defenses, Cross-Defendant Illinois Union Insurance Company prays as follows:

1. That SCH's claims against Illinois Union be dismissed with prejudice and SCH recover nothing by them;

2. That all costs and attorneys' fees incurred by Illinois Union be taxed against SCH; and

3. That Illinois Union be awarded such other and further relief as the Court may deem just and proper.

Dated: June 29, 2020

GORDON REES SCULLY MANSUKHANI, LLP

By: s/Sally S. Kim
Donald J. Verfurth, WSBA #15554
Sally S. Kim, WSBA #35289
Attorneys for Cross-Defendant Illinois Union Insurance Company
Gordon Rees Scully Mansukhani, LLP
701 Fifth Avenue, Suite 2100
Seattle, WA 98104
Phone: (206) 695-5100
Email: dverfurth@grsm.com
sallykim@grsm.com

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on this date I electronically filed a true and accurate copy of the document to which this declaration is affixed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following counsel of record:

Counsel for Plaintiff:

Carl Edward Forsberg
Email: cforsberg@foum.law, csimpson@foum.law

Charles A. Henty
Email: chenty@foum.law, csimpson@foum.law

Margaret D Thomas
Email: mthomas@wileyrein.com

Matthew S Adams
Email: madams@foum.law, HMcQueen@foum.law

Richard A Simpson
Email: rsimpson@wileyrein.com

Counsel for Defendant/Cross-Claimant Seattle Children's Healthcare System

Kasey D Huebner
Email: khuebner@gordontilden.com, eevans@gordontilden.com

Miles C Bludorn
Email: mbludorn@gordontilden.com, eevans@gordontilden.com

Franklin Dennis Cordell
Email: fcordell@gordontilden.com, jlucien@gordontilden.com

Counsel for Cross-Defendant National Fire & Marine Ins. Co.

Jonathan Toren
Email: jtoren@cozen.com, bbuckner@cozen.com, jonathan-toren-1988@ecf.pacerpro.com, jtoren@gmail.com

Counsel for Cross-Defendant Lexington Ins. Co.

Gabriel Baker and Steven D. Jensen
Email: gabe.baker@jmblawyers.com, steve.jensen@jmblawyers.com, benjamin.roesch@jmblawyers.com, laura.morse@jmblawyers.com

CERTIFICATE OF SERVICE

**GORDON REES SCULLY
MANSUKHANI, LLP**
701 Fifth Avenue, Suite 2100
Seattle, WA 98104
Telephone: (206) 695-5100
Facsimile: (206) 689-2822

Counsel for Cross-Defendant Ironshore Specialty Ins. Co.

Peter J. Mintzer

Email: pmintzer@selmanlaw.com, eenglish@selmanlaw.com

DATED this 29th day of June, 2020.

s/Caroline Mundy

Caroline Mundy, Legal Assistant

Email: cmundy@grsm.com

CERTIFICATE OF SERVICE

**GORDON REES SCULLY
MANSUKHANI, LLP**
701 Fifth Avenue, Suite 2100
Seattle, WA 98104
Telephone: (206) 695-5100
Facsimile: (206) 689-2822